

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ROBERT L KNISLEY
P O BOX 74
PERRY IA 50220

TYSON FRESH MEATS INC
c/o FRICK UC EXPRESS
P O BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-00655-DWT
OC 12/14/03 R 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's January 14, 2004 decision (reference 01) that concluded Robert L. Knisley (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because he had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 10, 2004. The claimant participated in the hearing. Tom Barrigan, the employment manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 4, 2003. The employer hired the claimant to work as a full-time employee. The employer informed the claimant he was a probationary employee the first three months.

On September 29, 2003 the claimant waited by the time clock a few minutes before he punched out. A supervisor asked the claimant why he had been waiting at the time clock before he punched out. After the claimant explained what he had done, which is what he had done since he began his employment, the supervisor told the claimant he could be discharged for theft of the employer's time.

The claimant did not consider his actions to amount to theft and was concerned he would be labeled a thief if the employer discharged him for this reason. As a result of this concern, the claimant did not report to work or contact the employer on October 2. The claimant instead went to a personal friend for advice on how to handle the situation. The claimant was scheduled to work on October 3 at 6:30 a.m. The claimant decided to talk to management and went to work at 8:00 a.m. or when the office opened so he could talk to someone.

On October 7, 2003, the claimant, a union representative and the employer met to discuss the claimant's employment. After listening to the claimant's explanation as to what happened on September 29, the employer decided the claimant would not be discharged for theft of company time. Instead, the employer discharged the claimant for failing to satisfactorily complete his probation by failing to report to work or call the employer on October 2 and for reporting to work late on October 3.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established a business reason for discharging the claimant on October 7, 2003. Unsatisfactory performance or conduct, however, does not rise to the level of work-connected misconduct. Even though the claimant did not report to work as scheduled or notify the employer on October 2 and 3, he did not intentionally disregard the employer's interests and he was not excessively absent from work. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. Therefore, as of December 14, 2003, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base period employers. During the claimant current benefit year, the employer's account will not be charged.

DECISION:

The representative's January 14, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of November 14, 2003, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

dlw/s